

Department of State

§ 103.3

site, defined by either geographic coordinates or description on a map.

Person. Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity located in the United States.

Respondent. Any person named as the subject of a letter of intent to charge, or a Notice of Violation and Assessment (NOVA) and proposed order.

Secretary. The Secretary of State.

Technical Secretariat. The Technical Secretariat of the Organization for the Prohibition of Chemical Weapons established by the Chemical Weapons Convention.

United States National Authority. The Department of State serving as the national focal point for effective liaison with the Organization for the Prohibition of Chemical Weapons and States Parties to the Convention and implementing the provisions of the CWCIA in coordination with an interagency group designated by the President consisting of the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Energy, the Chairman of the Joint Chiefs of Staff and the heads of agencies considered necessary or advisable by the President, or their designees. The Secretary of State is the Director of the United States National Authority.

Subpart B—Samples

§ 103.3 Requirement to provide a sample.

(a) *Voluntary provision of a sample.* The Host Team Leader will notify appropriate site representatives of any request by an Inspection Team to take a sample. At the request of the appropriate site representative, this notification will be in writing. A site representative may volunteer to provide a sample to the Inspection Team, or may communicate to the Host Team Leader any reason for which the representative believes a sample should not be required.

(b) *Notification of requirement to provide a sample.* If a sample is not provided pursuant to paragraph (a) of this section, the Host Team Leader will notify, in writing, the owner or operator, occupant or agent in charge of an inspected premises of any requirement, under paragraph (c) or (e) of this section, to provide a sample pursuant to a request, made in accordance with paragraph (k) of this section, of an Inspection Team of the Technical Secretariat.

(c) *Requirement to provide a sample.* Pursuant to section 304(f)(1) of the CWCIA, unless a lead agency advises the United States National Authority pursuant to paragraph (d) of this section, the owner or operator, occupant or agent in charge of the premises to be inspected is hereby required to provide a sample pursuant to a request, made in accordance with paragraph (k) of this section, of an Inspection Team of the Technical Secretariat that a sample be taken in accordance with the applicable provisions contained in the Chemical Weapons Convention and the CWCIA.

(d) *Consultations with the United States National Authority.* After consulting with the Host Team Leader, a lead agency that finds that any of the following conditions, as modified pursuant to paragraph (j) of this section if applicable, may not have been satisfied shall promptly advise the United States National Authority, which, in coordination with the interagency group designated by the President in section 2 of Executive Order 13128, shall make a decision:

(1) The taking of a sample is consistent with the inspection aims under the Convention and with its Confidentiality Annex;

(2) The taking of a sample does not unnecessarily hamper or delay the operation of a facility or affect its safety, and is arranged so as to ensure the timely and effective discharge of the Inspection Team's functions with the least possible inconvenience and disturbance to the facility;

(3) The taking of a sample is consistent with the applicable facility agreement. In particular:

(i) Any sample will be taken at sampling points agreed to in the relevant facility agreement; and

(ii) Any sample will be taken according to procedures agreed to in the relevant facility agreement;

(4) In the absence of a facility agreement, due consideration is given to existing sampling points used by the owner or operator, occupant or agent in charge of the premises, consistent with any procedures developed pursuant to the CWCIA (15 CFR parts 710 through 722);

(5) The taking of a sample does not affect the safety of the premises and will be consistent with safety regulations established at the premises, including those for protection of controlled environments within a facility and for personal safety;

(6) The taking of a sample does not pose a threat to the national security interests of the United States; and

(7) The taking of a sample is consistent with any conditions negotiated pursuant to paragraph (j) of this section, if applicable.

(e) *Determination by United States National Authority.* (1) If, after being advised by the lead agency pursuant to paragraph (d) of this section, the United States National Authority, in coordination with the interagency group designated by the President to implement the provisions of the CWCIA, determines that all of the conditions of paragraph (d) are satisfied and that a sample shall be required, then the owner or the operator, occupant or agent in charge of the premises shall provide a sample pursuant to a request of the Inspection Team of the Technical Secretariat.

(2) If, however, after being advised by the lead agency pursuant to paragraph (d) of this section, the United States National Authority, in coordination with the interagency group designated by the President to implement the provisions of the CWCIA, determines that any of the conditions of paragraph (d) are not satisfied and that a sample shall not be required, then the owner or the operator, occupant or agent in charge of the premises shall not be required to provide a sample pursuant to a request of the Inspection Team of the Technical Secretariat.

(f) *Person to take a sample.* If a sample is required, the owner or the operator, occupant or agent in charge of the inspected premises will determine whether the sample will be taken by a representative of the premises, the Inspection Team, or any other individual present. The owner or the operator, occupant or agent in charge of the inspected premises may elect to have a representative present during the taking of a sample.

(g) *Requirement that samples remain in the United States.* No sample collected in the United States pursuant to an inspection permitted by the CWCIA may be transferred for analysis to any laboratory outside the territory of the United States.

(h) *Handling of samples.* Samples will be handled in accordance with the Convention, the CWCIA, other applicable law, and the provisions of any applicable facility agreement.

(i) *Failure to comply with this section.* Failure by any person to comply with this section may be treated as a violation of section 306 of the Act and section 103.5(a).

(j) *Conditions that restrict sampling activities during challenge inspections.* During challenge inspections within the inspected premises the Host Team may negotiate conditions that restrict activities regarding sampling, e.g., conditions that restrict where, when, and how samples are taken, whether samples are removed from the site, and how samples are analyzed.

(k) *Format of Inspection Team request.* It is the policy of the United States Government that Inspection Team requests for samples should be in written form from the head of the Inspection Team. When necessary, before a sample is required to be provided, the Host Team Leader should seek a written request from the head of the Inspection Team.

(l) *Requirement to provide a sample in the band around the outside of the perimeter during a challenge inspection.* In a band, not to exceed a width of 50 meters, around the outside of the perimeter of the inspected site, the Inspection Team, during a challenge inspection, may take wipes, air, soil or effluent samples where either:

(1) There is consent; or

Department of State

§ 103.7

(2) Such activity is authorized by a search warrant obtained pursuant to section 305(b)(4) of the CWCIA.

Subpart C—Recordkeeping and Inspection Requirements

§ 103.4 General.

This subpart implements the enforcement of the civil penalty provisions of section 501 of the Chemical Weapons Convention Implementation Act of 1998 (CWCIA), and sets forth relevant administrative proceedings by which such violations are adjudicated. Both the Department of State (in this subpart), and the Department of Commerce (in part 719 of the CWCER at 15 CFR parts 710 through 722) are involved in the implementation and enforcement of section 501.

§ 103.5 Violations.

(a) *Refusal to permit entry or inspection.* No person may willfully fail or refuse to permit entry or inspection, or disrupt, delay or otherwise impede an inspection, authorized by the CWCIA.

(b) *Failure to establish or maintain records.* No person may willfully fail or refuse:

(1) To establish or maintain any record required by the CWCIA or the Chemical Weapons Convention Regulations (CWCER, 15 CFR parts 710 through 722) of the Department of Commerce; or

(2) To submit any report, notice, or other information to the United States Government in accordance with the CWCIA or CWCER; or

(3) To permit access to or copying of any record that is exempt from disclosure under the CWCIA or the CWCER.

§ 103.6 Penalties.

(a) *Civil penalties*—(1) *Civil penalty for refusal to permit entry or inspection.* Any person that is determined to have willfully failed or refused to permit entry or inspection, or to have willfully disrupted, delayed or otherwise impeded an authorized inspection, as set forth in § 103.5(a), shall pay a civil penalty in an amount not to exceed \$25,000 for each violation. Each day the violation continues constitutes a separate violation.

(2) *Civil penalty for failure to establish or maintain records.* Any person that is

determined to have willfully failed or refused to establish or maintain any record, or to submit any report, notice, or other information required by the CWCIA or the CWCER, or to permit access to or copying of any record exempt from disclosure under the CWCIA or CWCER as set forth in § 103.5(b), shall pay a civil penalty in an amount not to exceed \$5,000 for each violation.

(b) *Criminal penalties.* Any person that knowingly violates the CWCIA by willfully failing or refusing to permit entry or inspection; or by disrupting, delaying or otherwise impeding an inspection authorized by the CWCIA; or by willfully failing or refusing to establish or maintain any required record, or to submit any required report, notice, or other information; or by willfully failing or refusing to permit access to or copying of any record exempt from disclosure under the CWCIA or CWCER, shall, in addition to or in lieu of any civil penalty that may be imposed, be fined under Title 18 of the United States Code, or be imprisoned for not more than one year, or both.

(c) *Other remedial action*—(1) *Injunction.* The United States may, in a civil action, obtain an injunction against:

(i) The conduct prohibited under 18 U.S.C. 229 or 229C; or

(ii) The preparation or solicitation to engage in conduct prohibited under 18 U.S.C. 229 or 229D.

(2) In addition, the United States may, in a civil action, restrain any violation of section 306 or section 405 of the CWCIA, or compel the taking of any action required by or under the CWCIA or the Convention.

§ 103.7 Initiation of administrative enforcement proceedings.

(a) *Issuance of Notice of Violation and Assessment (NOVA).* The Director of the Office of Export Enforcement, Bureau of Export Administration, Department of Commerce, may request that the Secretary initiate an administrative enforcement proceeding under this section and 15 CFR 719.5. If the request is in accordance with applicable law, the Secretary will initiate an administrative enforcement proceeding by issuing a Notice of Violation and Assessment (NOVA). The Office of Chief Counsel for Export Administration, Department of